

Virginia Administrative Code Contract Subcommittee
Summary of Meeting
Tuesday, September 25, 2012 - 10 a.m.
GAB, 2nd Floor, House Redistricting Room

Subcommittee members E.M. Miller, Bob Tavenner, and Chris Nolen met to discuss options for printing an administrative code after the Code Commission's contract with West expires. In addition to the subcommittee members, Jane Chaffin and Karen Perrine attended the meeting in a staffing capacity.

The existing Virginia Administrative Code contract expires at the end of 2012 and West, the current publisher, has notified the Commission that it is unable to continue producing the administrative code in print without a significant price increase and a change in format. West presented a proposal to the Commission in August, and also offered to extend the existing contract until April 2013 to give the Commission time to make a decision. The Commission chair appointed this subcommittee to develop recommendations for the full Commission's consideration.

Mr. Miller was designated chair of the subcommittee. He indicated that he would like to report subcommittee options with a viable recommendation to the Commission at the December meeting.

Jane Chaffin presented the results of an informal poll conducted to find out who is currently subscribing to the print edition of the Virginia Administrative Code. The poll was emailed to 65 state agencies directly and emailed to the Virginia Association of Law Librarians through its list-serve. A total of 59 responses were received with 32 respondents indicating that they subscribe to updates to the full set or individual volumes, or both. Breaking this down, 7 of 33 state agency respondents subscribe to print (5 to the full set updates and 2 to single volume updates); 10 of 11 library respondents subscribe to the full set; 9 of 9 law firm respondents subscribe to the full set (and some to multiple sets and single volumes); and 6 of 6 law school respondents subscribe to the full set.

Karen Perrine explained the process used in-house to prepare regulation data for (i) uploading to the online administrative code and (ii) delivering to West to update its print and electronic versions. Staff sends regulatory text that is ready for publication (i.e., if multiple regulatory actions amend the same sections, staff blends the text before sending), updated statutory authority for each section, and a summary of amendments. Currently, staff also updates the history for each section with Virginia Register notations and effective dates of each amendment, but this information is not currently disseminated to West.

The subcommittee discussed the following:

1. Accept West's proposal. Significant increase in price and change in format.
2. No contract for a print product. Allow anyone to publish and charge what the market will bear. Consider whether to charge anyone who wants to receive the data from us (e.g., Texas charges \$20,000-\$25,000 per year for monthly updates and both West and Lexis purchase these updates).
3. Formal bid process. Time-consuming and lengthy process. Commission is exempt from Procurement Act for purpose of contracting for the printing of the administrative and statutory codes, so a formal process is not required.

4. Informal process. Determine what legal publishers are out there and which ones might have an interest in publishing a print version of the administrative code. Negotiate a mutually beneficial arrangement.
5. Print inhouse. Option eliminated by the subcommittee based on DLS' previous experience with contracting for the printing of the Virginia Register and the expense involved with printing, distribution, and subscription management.
6. Authentication of online administrative code. The online version is updated daily, contains statutory authority and history notes, but no other annotations. Discussion items included the following: (i) consider preparing annotations in-house (new hire?) or contracting out annotations only; (ii) maintain two online versions--a free, unannotated version and a fee-based annotated version. This option would not be viable in the short-term, but could be a longer term solution.
7. Annotations. The subcommittee discussed to what extent annotations are needed. In addition to the regulation text and catchlines, the current contract requires:
 - a. statutory authority
 - b. history notes (includes Virginia Register notations and effective dates of each amendment)
 - c. amendment notes to include summary of changes made by amendments and repeal notes describing what a repealed regulation pertained to prior to repeal
 - d. editorial notes (explanatory material to make the code easier to use)
 - e. cross references to other regulations and statutes
 - f. research and practice references to major national and state legal publications
 - g. Attorney General opinions
 - h. annotations of state appellate and federal court cases

Mr. Nolen stated that resources for researching cases are readily available and, therefore, are less important for purposes of annotations. On the other hand, opinions of the Virginia Attorney General related to regulations are more difficult to locate, so annotations referencing such opinions are more helpful. He suggested polling the administrative law community with regard to general use of administrative code annotations. Mr. Nolen and Mr. Miller discussed raising the issue with the Administrative Law Advisory Committee at its next meeting and with attendees at the upcoming Administrative Law Conference.

Mr. Miller asked staff to develop a list of publishers who publish administrative codes and make informal inquiries concerning interest in Virginia's administrative code. Mr. Miller stated that he had spoken with the Brian Kennedy at LexisNexis, who in turn spoke with his manager Anders Ganten, concerning this matter. So far LexisNexis has shown no interest in pursuing publication of a print edition of the administrative code; however, Mr. Miller stated that he will contact Anders Ganten at LexisNexis directly to discuss further.